

## INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The County Counsel of Kern County has prepared the following title and summary of the chief purposes and points of the proposed measure.

**BIOSOLIDS LAND APPLICATION BAN: INITIATIVE ORDINANCE.** Prohibits the land application of biosolids in the unincorporated area of Kern County. “Biosolids” are treated solid, semi-solid or liquid residue generated during the treatment of sewage in a wastewater treatment facility. Land application of any materials containing biosolids is prohibited immediately. In addition, the ban prohibits the discharge of biosolids to surface waters and surface water drainage courses and prohibits leaching or other introduction of biosolids to groundwater aquifers. Biosolids, packaged for routine retail sales through regular retail outlets, which are primarily used for residential purposes in limited amounts are permissible and are excluded from the ban.

Existing permit holders have six months to discontinue the land application of biosolids. An appeal procedure is established to request an extension of time to discontinue such application if special circumstances exist which create a hardship for those who have installed or constructed permanent improvements relating to the land application of biosolids. The final step of the appeal process is a hearing before the Kern County Board of Supervisors, which may grant an extension not to exceed six months.

Violation of the ordinance is a misdemeanor punishable by a fine of not more than \$500 or not more than six months in prison, or both, for each day of violation. An offender may also be required to pay for cleanup and disposal costs.

### KEEP KERN CLEAN ORDINANCE OF 2006

THE PEOPLE OF THE COUNTY OF KERN, STATE OF CALIFORNIA, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. This ordinance shall be known as the “Keep Kern Clean Ordinance of 2006”. It shall take effect and be in full force immediately upon passage by the People of Kern County, and shall be published and processed in the manner required by the law of the State of California and Kern County.

Section 2. Chapter 8.05 of the Ordinance Code of Kern County is hereby repealed and a new Chapter 8.05 is hereby enacted to read as follows:

#### CHAPTER 8.05

#### LAND APPLICATION OF BIOSOLIDS

##### 8.05.10 PURPOSE AND INTENT

There are numerous serious unresolved issues about the safety, environmental effect, and propriety of land applying Biosolids or sewage sludge, even when applied in accordance with federal and state regulations. Biosolids may contain heavy metals, pathogenic organisms, chemical pollutants, and synthetic organic compounds, which may pose a risk to public health and the environment even if properly handled. Sampling and other monitoring mechanisms are not feasibly capable of reducing the risks associated with Biosolids to a level acceptable to the people of Kern County. Land spreading of Biosolids poses a risk to land, air, and water, and to human and animal health. It may cause loss of confidence in agricultural products from Kern County. It causes the loss of productive agricultural lands capacity

for human food production for significant periods of time. It presents a risk of airborne Biosolid particulate matter in circumstances unique to Kern County. It presents risks of unique odor, insect attraction, and other nuisances which are unacceptable to the people of Kern County and cannot be feasibly controlled to a risk level acceptable to the people of Kern County.

For each of the foregoing reasons, individually and collectively, and in order to promote the general health, safety and welfare of Kern County and its inhabitants, it is the intent of this Chapter that the land application of Biosolids shall be prohibited in the unincorporated area of Kern County.

##### 8.05.020 AUTHORITY

This Chapter is adopted pursuant to the initiative power of the People of Kern County and the police power of Kern County as set forth in Article XI, Section 7, of the California Constitution. In addition, the Clean Water Act, 33 U.S.C. Section 1345, U.S. EPA regulations, 40 C.F.R. Part 503, and California Water Code Section 13274 recognize the authority of local government to impose more stringent requirements on the use or disposal of sewage sludge in order to protect public health and the environment from any adverse effect from sewage sludge.

##### 8.05.030 DEFINITIONS

- A. “Agency” means an authorized representative of the Environmental Health Services Department of the County of Kern.
- B. “Biosolids” are treated solid, semi-solid or liquid resi-

dues generated during the treatment of sewage in a wastewater treatment works and includes a material derived from or containing sewage sludge such as compost and pelletized sewage sludge, irrespective of where generated, produced or treated. These residues include, but are not limited to, scum or solids removed in primary, secondary or advanced wastewater treatment processes and material derived from sewage sludge. Biosolids, as used in this chapter, excludes biosolid products that are in a bag or container packaged for routine retail sales through regular retail outlets which are primarily used for residential purposes in limited quantities.

- C. "County" means the County of Kern, State of California.
- D. "Hardship" means a substantial economic burden imposed on a person after due consideration of potential alternative methods of disposal.
- D. "Land Apply" means the spraying, spreading or other placement of Biosolids onto the land surface, the injection of Biosolids below the surface, or the incorporation of Biosolids into the soil.
- E. "Permit" means a land application permit issued by the County under the provisions of former Chapter 8.05.
- F. "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, entity, city, county or other political subdivision or public agency, or any other group or combination acting as a unit.
- G. "Site" means the area of land covered by a permit issued under former Chapter 8.05.

#### 8.05.040 BIOSOLIDS PROHIBITED

- A. It shall be unlawful for any person to Land Apply Biosolids to property within the unincorporated area of the County. Any Site for which a Permit was issued prior to the effective date of this Chapter shall have six (6) months from the effective date of this Chapter to discontinue land application of Biosolids.
- B. The discharge of Biosolids to surface waters or surface water drainage courses, including wetlands and water ways, or the leaching or other introduction of Biosolids or any constituent of Biosolids to groundwater aquifers is prohibited.

#### 8.05.050 APPEAL PROCESS

- A. Any person who has installed or constructed permanent improvements related to the Land Spreading of Biosolids who contends there are special circumstances which render the discontinuance of land application of Biosolids a Hardship, may request in writing filed with the Agency within thirty (30) days of the effective date of this Chapter,

and the Agency may grant up to an additional three (3) months of time for the discontinuance of the land spreading of Biosolids commensurate with the circumstances creating the Hardship. If the Agency has not acted within sixty (60) days of the filing of the request, the request shall be deemed denied and the time for filing an appeal pursuant to subdivision B of this section shall begin to run.

B. Any denial of such a request may be appealed to the Board of Supervisors. Any appeal shall be made by filing a written request for a hearing before the Board of Supervisors with the Clerk of the Board not more than ten (10) calendar days after notice of the denial has been delivered. Upon receipt of a written request for a hearing, the Clerk of the Board shall set the matter for public hearing on a date not more than sixty (60) calendar days following receipt of such written request, and shall give the applicant, any person who has requested in writing from the Clerk notice under this section, and the Board of Supervisors at least thirty (30) calendar days written notice of the time, date, and place of the hearing. After the hearing, the Board of Supervisors shall issue its written decision and finding on the appeal within thirty (30) calendar days after the close of the hearing. If making a finding of Hardship, the Board of Supervisors may grant up to the six months of additional time. Such decision shall be final.

#### 8.05.060 PENALTY FOR VIOLATION

Any person violating any provision of this chapter is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not more than \$500 or by imprisonment of not more than six months or both for each offense. Every violation of this chapter shall be construed as a separate offense for each day during which such violation continues and shall be punishable as provided in this section. The Court or the County may also demand and require the violator to clean up at the violator's expense any illegally applied or deposited Biosolids and dispose of it in an approved, environmentally safe and clean manner.

Section 3. If any clause, provision, sentence, or paragraph of this ordinance, or the application thereof, is deemed to be invalid as to any person, entity, establishment, or circumstance, such invalidity shall not affect the other provisions of this ordinance which shall still remain in effect, and to that end, it is hereby declared that the provisions of this ordinance are severable.